

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ALIGN TECHNOLOGY, INC.,

Plaintiff,

v.

CLEARCORRECT OPERATING, LLC,
CLEARCORRECT HOLDINGS, INC., &
INSTITUT STRAUMANN AG,

Defendants.

CLEARCORRECT OPERATING, LLC,
CLEARCORRECT HOLDINGS, INC., &
INSTITUT STRAUMANN AG,

Counterclaim-Plaintiffs,

v.

ALIGN TECHNOLOGY, INC.,

Counterclaim-Defendant.

Case No. 6:24-cv-00187-ADA-DTG

PATENT CASE

**PLAINTIFF AND COUNTERCLAIM-DEFENDANT ALIGN TECHNOLOGY INC.'S
REQUEST FOR JUDICIAL NOTICE**

Pursuant to Rule 201 of the Federal Rules of Evidence (“FRE”), Plaintiff and Counterclaim-Defendant Align Technology, Inc. (“Align”) by and through their undersigned counsel, respectfully request that the Court take judicial notice of the following exhibits in connection with the Align’s Motion to Dismiss Defendant and Counterclaim-Plaintiff’s Counterclaims pursuant to Fed. R. Civ. P. 12(b)(6) (“Motion to Dismiss”).

1. **Exhibit 1:** A true and correct copy of an Order Granting Motions Summary Judgement, *Simon & Simon, PC v. Align Tech., Inc.*, No. 20-CV-03754-VC, 2024 WL 710623 (N.D. Cal. Feb. 21, 2024).

2. **Exhibit 2:** A true and correct copy of a sealed Order Granting in Part and Denying in Part 243 Align’s Sealed Mot. for Partial Summary Judgment, ECF No. 306, *Align Technology, Inc v. ClearCorrect, Inc.*, Case No. 4:11-cv-00695, (S.D. Tex. Mar. 15, 2019), filed under seal.

3. **Exhibit 3:** A true and correct copy of a press release issued by Align Technology, titled “ITC Judge Finds ClearCorrect Infringes All of Align’s Asserted Patents”, dated May 6, 2013, publicly available and accessible at <https://investor.aligntech.com/news-releases/news-release-details/itc-judge-finds-clearcorrect-infringes-all-aligns-asserted>.

4. **Exhibit 4:** A true and correct copy of a printout of a webpage for ClearCorrect Support, titled “How to Submit Cases with an iTero Scanner Tutorial”, accessed on September 11, 2024, publicly available and accessible at <https://support.clearcorrect.com/hc/en-us/articles/4404214285847-How-to-Submit-Cases-with-an-iTero-Scanner-Tutorial#1>.

5. **Exhibit 5:** A true and correct copy of a printout of a webpage for Jarosz & Valente Orthodontics, P.C, titled “iTero and Clear Correct”, accessed on September 11, 2024, publicly available and accessible at <https://www.jvortho.com/our-blog/i-tero-and-clear-correct>.

6. **Exhibit 6:** A true and correct copy of a SureSmile document titled “SureSmile

Protocol: iTero Orthodontic Scanner”, accessed on September 11, 2024, publicly available and accessible at <https://www.suresmile.com/wp-content/uploads/uploads/2016/07/DOC-500368-6-protocol-iTero.pdf>.

7. **Exhibit 7:** A true and correct copy of a press release issued by Align Technology, titled “Align Technology Files Six Patent Infringement Lawsuits Asserting 26 Patents Against 3Shape”, dated November 14, 2017, publicly available and accessible at <https://investor.aligntech.com/news-releases/news-release-details/align-technology-files-six-patent-infringement-lawsuits>.

8. **Exhibit 8:** A true and correct copy of a Dentsply Sirona document titled “National PDC 2022”, dated March 10, 2022, accessed on September 11, 2024, publicly available and accessible at https://assets.dentsplysirona.com/flagship/en_ca/2021folder/webbooklet/CAN-DS-WB-PDC-2022-EN.pdf.

9. **Exhibit 9:** A true and correct copy of a Dentsply Sirona document titled “Primescan Savings”, accessed on September 11, 2024, publicly available and accessible at <https://assets.dentsplysirona.com/flagship/en-us/DIM-DS-World-Promo-Flyer.pdf>.

10. **Exhibit 10:** A true and correct copy of a printout of a ClearCorrect webpage titled “Experience Clear Aligner Excellence with ClearCorrect & 3Shape TRIOS 5”, accessed on September 11, 2024, publicly available and accessible at <https://www.straumann.com/clearcorrect/us/en/landing/commitmentbundle.html>.

11. **Exhibit 11:** A true and correct copy of a Align Technology Financial Results Q4 and Year End 2016, accessed on September 11, 2024, publicly available and accessible at <https://investor.aligntech.com/static-files/96d62ed5-e494-4e07-a6a3-8044523fcad4>.

12. **Exhibit 12:** A true and correct copy of a VIP Dental Spas’ Third Amended Responses to Align’s First Set of Interrogatories, dated January 31, 2023, publicly available at

Simon & Simon v. Align Tech., Inc., No. 20-cv-03754-VC, ECF No. 323-7 (N.D. Cal.).

13. **Exhibit 13:** A true and correct copy of the American Dental Association’s Dentist Demographics dashboard, accessed on September 11, 2024, publicly available and accessible at <https://www.ada.org/resources/research/health-policy-institute/us-dentist-demographics>.

I. LEGAL STANDARD

“When reviewing a motion to dismiss, a district court ‘must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.’” *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)) (citations omitted). Pursuant to Federal Rule of Evidence 201, a fact is judicially noticeable whenever it is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Courts “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

A. Exhibits 1-2 and 12 are Judicially Noticeable Court Filings and Opinions

Courts “may take judicial notice of prior court proceedings as matters of public record.” *Lake Eugenie Land & Dev., Inc. v. Halliburton Energy Servs., Inc. (In re Deepwater Horizon)*, 934 F.3d 434, 440 (5th Cir. 2019) (citation omitted). Align’s request for judicial notice of Exhibits 1 and 11 pertains to matters of public record, previous opinions and proceedings. *Anderson v. Wells Fargo Bank, N.A.*, 953 F.3d 311, 314 (5th Cir. 2020) (“[A]s the district court did, we take judicial notice of the previous judgments and opinions, matters of public record that were attached to the motion to dismiss”). Specifically, Exhibits 1 and 2 are orders from the Northern District of

California and the Southern District of Texas. *See Simon & Simon v. Align Tech., Inc. and Snow v. Align Tech., Inc.*, Nos. 20-cv-03754-VC & 21-cv-03269-VC, 2024 WL 710623 (N.D. Cal. Feb. 21, 2024); Order Granting in Part and Denying in Part 243 Align’s Sealed Mot. for Partial Summary Judgment, ECF No. 306, *Align Technology, Inc v. ClearCorrect, Inc.*, Case No. 4:11-cv-00695, (S.D. Tex. Mar. 15, 2019). Similarly, Exhibit 12 is verified interrogatory responses from the named plaintiff in another judicial proceeding publicly available on the court docket. *See Simon & Simon v. Align Tech., Inc.*, No. 20-cv-03754-VC, ECF No. 323-7 (N.D. Cal.).

Judicial notice of these exhibits is proper, as the authenticity is not subject to reasonable dispute, the exhibits are from a source that cannot reasonably be questioned, and this Court may take judicial notice of orders and judicial proceedings in other cases. *See Karaha Bodas Co., LLC v. Perusahaan Perambangan Minyak Dan Gas Bumi Negara*, 2003 WL 21027134, at *4 (5th Cir. Mar. 5, 2003) (“[t]his court can take judicial notice of another court’s judicial action”); *Swindol v. Aurora Flight Scis. Corp.*, 805 F.3d 516 (5th Cir. 2015); Fed. R. Evid. 201.

B. Exhibits 3-11 and 13 are Judicially Noticeable Matters of Public Record Not Subject to Reasonable Dispute

Courts may take judicial notice of publicly available documents, transcripts, and sources, which are “matters of public record directly relevant to the issue at hand.” *Norris v. Hearst Tr.*, 500 F.3d 454, 461 n. 9 (5th Cir.2007) (“it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”). Align’s request for judicial notice of Exhibits 3-11 and 13 pertains to publicly available material not subject to reasonable dispute that are relevant to the issues at hand. *Id.*; Fed. R. Evid. 201. There is no rational reason to doubt the authenticity of any of Exhibits 2-10, and 12, as the addresses for the webpages they were printed from have been provided and can be readily verified. Fed. R. Evid. 201. Additionally, Exhibits 3-4, 7, and 10-11 are true and accurate copies of publicly available material on Align and ClearCorrect’s official websites. *See Columbare v. Sw. Airlines, Co.*, No. 3:21-cv-297-B-BK, 2023 WL 406439, at *4

(N.D. Tex. Jan. 10, 2023) (“Courts have taken judicial notice of publicly available information on a company’s official website.”); 29 Am. Jur. 2d Evidence § 95 (“A court may take judicial notice of information publicly announced on a party’s website, as long as the website’s authenticity is not in dispute and it is capable of accurate and ready determination.”). Such material includes Align and ClearCorrect’s publicly available and widely disseminated press releases, documents, and official webpages. *Id.*; *see also In re Online Travel Co.*, 997 F. Supp. 2d 526, 532 n.6 (N.D. Tex. 2014) (taking judicial notice of a press release) *HCL Techs. v. Atos S.E.*, 3:23-cv-868-L,2024 WL 1076821, at *8 (N.D. Tex. Jan. 31, 2024) (taking judicial notice of screenshots from defendants’ website).

Thus, because Align requests that the Court take judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned,” and has “supplied [the Court] with the necessary information[,]” the Court should grant Align’s Request as to Exhibits 2-10 and 12. *See* Fed. R. Evid. 201.

II. CONCLUSION

For the foregoing reasons, Align respectfully requests that the Court take judicial notice of the twelve documents described herein (Exhibits 1-13).

DATED: September 13, 2024

Respectfully submitted,

By: /s/ James M. Pearl

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on September 13, 2024.

/s/ *James M. Pearl*
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